

Management Contract - Transit System

THE STATE OF TEXAS

§

THE COUNTY OF GREGG

§

§

KNOW ALL MEN BY THESE PRESENTS:

This Contract and Agreement is made and entered into on this, the ____ day of **September, 2011**, by and between the **CITY OF LONGVIEW**, a municipal corporation located in Gregg County, Texas hereinafter referred to as "**City**", and **McDONALD TRANSIT ASSOCIATES, INC.**, a Texas Corporation, hereinafter referred to as "**MTA**" acting by and through Robert T. Babbitt, its duly authorized President.

WITNESSETH:

WHEREAS, the **City** has acquired garage and office facilities, motor coach equipment, and other assets sufficient for the operation of a bus transit system in and around the City of Longview, Texas; and,

WHEREAS, the **City** has determined that it will continue to require the services of a professional management company for the City-owned transit system which is being operated in its area of jurisdiction; and,

WHEREAS, the **City** solicited proposals from qualified transportation management firms to manage and operate the motor bus transit system conducted in and about the City of Longview, Texas, as an independent contractor; and,

WHEREAS, such proposals were received on August 1, 2011, and after careful consideration and evaluation of the proposals, it is determined that it is in the best interest of the **City** to select **MTA** to provide management and operation services for the said motor bus transit system; and,

WHEREAS, the **MTA** is engaged in the business of providing advisory and management services for the operation of transit systems and has trained, experienced personnel available for that purpose, and is desirous of providing such advisory and management services for the **City**; and,

WHEREAS, the **City** has made the determination that **MTA** is qualified to provide the services above set forth and contracting with **MTA** would serve the best interests and welfare of the public utilizing the transit system operated by the **City**;

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants and agreements of each of the parties herein set forth, the parties hereto agree as follows:

ARTICLE 1.

The **City** does hereby engage **MTA** to manage and operate the motor bus transit system conducted in and about the City of Longview, Texas, as an independent contractor, on the terms and conditions hereinafter set forth.

ARTICLE 2. FACILITIES AND EQUIPMENT

It is agreed that the **City** will provide such office, garage and storage facilities, fueling stations, motor coaches and other equipment necessary or appropriate for the operation of the bus transit system.

ARTICLE 3. TERM

The term of this Contract and agreement shall be for a period of three (3) years beginning on October 1, 2011, and ending on September 30, 2014. However, it is covenanted and agreed by and between the parties that the **City** shall have the option to renew and extend this Contract for two additional one (1) year terms. The **City** shall give **MTA** written notice that it is exercising its option to renew and extend this Contract at least sixty (60) days prior to the expiration of the original three (3) year or option term. It is further covenanted and agreed that either party at any time may terminate this Contract or any extension thereof upon one hundred twenty (120) days' written notice to the other party. Notwithstanding the above, it is agreed by and between the parties that this Contract is expressly contingent on the actual receipt of federal funds by the **City** for this Contract. If federal funds are not available, this Contract or any extension thereof may be terminated at any time at the option of the **City**. The parties further agree that this Contract shall not be construed as creating any debt by or on behalf of the City of Longview. Accordingly, this Contract is specifically contingent upon continued appropriations for payment hereunder and if the governing body of City does not appropriate funds to continue paying for the work under this Contract, then this Contract shall terminate as of the last day for which funds were appropriated.

ARTICLE 4. RESIDENT GENERAL MANAGER

MTA agrees to furnish a qualified, diligent, expert and efficient executive who will reside in the Longview area and who will be assigned to, and perform the function of, the position of Resident General Manager who will serve as operating officer and be responsible for managing all departments of the system in an efficient and effective manner.

Any changes in the Resident General Manager during the term of this Contract shall be with the advice and consent of the **City**. **MTA** agrees that any new Resident General Manager shall have a sixty (60) day probationary period within which time period the **City** shall have the right to request removal of the said Resident General Manager. If **City** so requests, **MTA** shall remove that person and shall select another person as Resident

General Manager as set forth above. **MTA** will, if possible, give the **City** sixty (60) days notice prior to a change in the Resident General Manager.

ARTICLE 5. MANAGEMENT SERVICES

MTA further covenants and agrees to furnish expert management services and / or consultation in all areas of the public bus transportation industry, including but not limited to the following:

1. Comprehensive management and policy direction in:
 1. Operations; systems and procedures; and research.
 2. Finance and accounting.
 - 1) Annual budget preparation.
(Fiscal Year 10/01 - 09/30).
 - 2) Quarterly and annual report preparation.
 - 3) Budget accountability.
 - 4) Accountability if approved budget level is exceeded without authorization by the **City**. If an expenditure made by **MTA** is not previously approved or not authorized by the **City**, **MTA** will reimburse the **City** for such expenditure.
 - 5) Comply with all **City** policies and procedures as may apply as well as those of the Federal Transit Administration (FTA) and Texas Department of Transportation (TxDOT).
 - 6) Provide all accounting services to include accounts payable, accounts receivable, payroll and any other duties as necessary in accordance with generally accepted accounting practices.
 3. Schedules, transportation, fare schedule recommendations and routing.
 4. Safety, accident prevention.
 5. Insurance.
 6. Maintenance and purchase of equipment.
 7. Promotion marketing, customer relations, and sale of advertising space in conjunction with the City of Longview.
 8. Complete knowledge of governmental grant application preparation and processing.
 9. Security.
2. Management continuity.
3. Management personnel development and training (and recruitment as necessary).
4. Compliance with Federal Transit Administration regulations (including but not limited to Title VI, EEO, ADA, DBE, Section 15), Clean Air Act, Stormwater Management, Texas Department of Transportation and local purchasing regulations and procedures as well as other applicable federal, state and local laws, rules, regulations, guidelines, and requirements.

5. Personnel and labor relations including bargaining unit contract negotiations.
6. Participate with local committees and organizations to include, but not limited to, the city of Longview Public Transportation Advisory Committee, East Texas Council of Governments, Community Health Core, Longview MPO Technical Committee, Longview Independent School District, LeTourneau University, Kilgore Community College, Texas Baptist College, Rotary Club, and Workforce Solutions East Texas.
7. Develop and implement FTA Section 5307 grant fund planning activities.

ARTICLE 6. PAYMENT

Payment for the services rendered by **MTA** under this Contract shall be as follows:

1. For the period beginning October 1, 2011, through September 30, 2012, the **City** shall pay to **MTA** the sum of Ten Thousand Seven Hundred Sixteen Dollars and Ten Cents (\$10,716.10) per month or One Hundred Twenty Eight Thousand Five Hundred Ninety Three Dollars and Twenty Cents (\$128,593.20) per year.
2. For the period beginning October 1, 2012 through September 30, 2013, the **City** shall pay to **MTA** the sum of Eleven Thousand Sixteen Dollars and Fifteen Cents (\$11,016.15) per month or One Hundred Thirty Two Thousand One Hundred Ninety Three Dollars and Eighty Cents (\$132,193.80) per year.
3. For the period beginning October 1, 2013 through September 30, 2014, the **City** shall pay to **MTA** the sum of Eleven Thousand Three Hundred Twenty Four Dollars and Sixty Cents (\$11,324.60) per month or One Hundred Thirty Five Thousand Eight Hundred and Ninety Five Dollars and Twenty Cents (\$135,895.20) per year.
4. If the **City** exercises its option to extend this Contract for the period beginning October 1, 2014, through September 30, 2015, the **City** shall negotiate with the **MTA** a payment for services; provided that said payment shall not exceed a total of \$142,689.96 for the entirety of said one-year period.
5. If the **City** exercises its option to extend this Contract for the period beginning October 1, 2015, through September 30, 2016, the **City** shall negotiate with the **MTA** a payment for services; provided that said payment shall not exceed a total of \$149,824.44 for the entirety of said one-year period.

Payment for such services under this contract shall be made in monthly installments in arrears within 30 days after receipt of each monthly payment request from LTMI, the first such payment request to be delivered to City beginning October 30, 2011.

The **City** further agrees to provide such funds as may be necessary to meet payroll and all other expenses of the operation of the bus transportation system, excluding

salaries and related payroll costs of the Resident General Manager, the cost of the fidelity bond on **MTA** officers as described in Article 9, and the cost of non-resident advisory services described in this section.

**ARTICLE 7.
MAINTENANCE OF AND OBLIGATION TO
TRANSFER OR DISSOLVE LONGVIEW TRANSIT SYSTEM, INC.**

MTA covenants and agrees that it will maintain, at its sole cost and expense, the Texas Corporation, Longview Transit Management, Inc., hereinafter called **LTMI**, which corporation shall serve as employer of Longview-based transit employees, excluding the Resident General Manager.

Any contractual obligations or liability entered into or assumed by **LTMI** and approved by the **City**, in conjunction with the operation of the transit system, shall be binding upon **MTA** only for the term of this Contract, as same may be extended, and thereafter **MTA** shall have no further obligations.

MTA agrees that, at the conclusion of this Contract, if directed by the **City**, it shall either transfer the ownership of the Longview Transit Management, Inc., corporation to the party designated by the **City** or dissolve the corporation.

**ARTICLE 8.
CITY OBLIGATION**

The **City** agrees to furnish to **MTA** all necessary office furniture, equipment, materials, supplies, rolling stock, bus maintenance and storage facilities and equipment, and automobile transportation which may be required by **MTA** in the performance of this Contract. This is a reimbursable operating expense through **LTMI**.

**ARTICLE 9.
FIDELITY AND SURETY BONDS**

MTA at its sole cost and expense shall furnish to **City** all necessary fidelity and surety bonds to protect, hold harmless, and indemnify **City** from and against dishonesty, fraud or theft occasioned by any officer or employee of **MTA**. Coverage of each such employee shall be in an amount of not less than Fifty Thousand Dollars (\$50,000.00).

Longview-based transit employees (**LTMI**), excluding the Resident General Manager, will be covered by a blanket fidelity bond, the premium for which shall be considered as an operating expense.

**ARTICLE 10.
NON-DISCRIMINATORY POLICY**

MTA covenants and agrees that in connection with the performance of this Contract and agreement, it will not discriminate against any individual with respect to compensation

terms or privileges of employment by reason of such individual's race, color, religion, sex, national origin or handicap (except as exempted by a bonafide occupational qualification).

ARTICLE 11. CONFLICT OF INTEREST

MTA covenants and agrees that it presently has no interest, and will not acquire any interest, direct or indirect, which conflicts with its efficient, diligent and faithful performance of the terms of the Contract and agreement.

ARTICLE 12. REPORTS

MTA, its officers, agents, employees and assignees, covenant and agree to maintain close contact and cooperation with the staff of **City** through a **City** staff member specifically designated for such purpose and to furnish to said staff member regular reports on the operations of the bus transportation system. **MTA** shall provide a formal end of the year report on the operations and accomplishments of **LTM** each year on or before December 31st of each year that this Contract is in effect.

ARTICLE 13. COMPLIANCE WITH GRANT CONTRACTS AND LAWS

MTA acknowledges and agrees that it shall comply with all terms and conditions of the Federal Transit Administration grant contracts between the United States and the City of Longview, the **City's** applications, assurances, and all other applicable Federal, state and local laws, rules and regulations which may apply in carrying out the accomplishment of the programs, including but not limited to Equal Employment Opportunity and Disadvantaged Business Enterprise.

ARTICLE 14. BUDGET AND ACCOUNTING PROCEDURES

MTA, its successors and assigns, covenant and agree to prepare, submit and recommend a proposed annual budget for the operation of the bus transportation system for the same fiscal year under which **City** operates, i.e., the period commencing October 1st and ending September 30th of each year. Such proposed budget shall be prepared and submitted in accordance with a schedule of presentation and submission approved by the City Manager or his / her duly authorized representatives.

MTA further covenants and agrees that it will comply with all accounting procedures established by **City**.

ARTICLE 15. RELATIONSHIP BETWEEN CITY AND MTA

All services to be rendered hereunder by **MTA** shall be subject to the reasonable supervision and control of the **City**. **MTA** shall make recommendations, or the **City** may

request information or recommendations, as to any areas of operation which are deemed appropriate and proper and the decision of the City Council shall be binding and final in regards thereto. It is the desire of the **City** to include, but in no way limiting this article, that **MTA** keep the department designated by the **City** informed as to any areas of maintenance or repair that are becoming excessive to include a monthly report with the top three vehicle repair list and a vehicle hold down list in excess of three days.

ARTICLE 16. INSURANCE

MTA shall obtain insurance coverage as set forth in Exhibit A and shall maintain said coverage in effect during the term of this Contract.

City reserves the right to review and approve such insurance coverage. All policies providing such coverage by their terms or by specific endorsement shall designate the **City** and **MTA** as additional named insureds under the terms thereof.

ARTICLE 17. INSURANCE PREMIUMS

All premiums payable with respect to the insurance policies described in Article 16 hereof shall be an operating expense of the transit system and shall be paid and satisfied by the **City**.

ARTICLE 18. AMENDMENTS, TERMINATION AND REMEDIES UPON DEFAULT

A. Changes

The **City** may, at any time, without prior notice to **MTA**, by written issuances, make changes in the work within the general scope of the Contract, in the scope of services provided and / or the method or manner of performance of the work.

B. Amendments Should **MTA** desire to amend the provisions of the Contract, it may be amended only in writing with written mutual agreement of both parties. Any such changes, amendments and modifications shall be attached to the Contract documents and shall constitute part of the total agreement between the parties.

C. Termination

1. For Convenience. Either Party at any time may terminate this Contract upon one hundred twenty (120) days' written notice to the other party.
2. For Cause. The Contract may be terminated by the City at its sole discretion and without prejudice to any other remedy to which it may be entitled at law or in equity, or elsewhere under this Contract, by giving seven (7) days' written notice of termination to **MTA** if the latter shall:
 1. Abandon the Contract; or
 2. Be adjudicated a voluntary or involuntary bankrupt; or
 3. Default in the performance of any material obligation under the Contract, and such default continues for a period of fifteen (15) days after the receipt of written notice from **City** of said default; or
 4. Do or fail to do any act which the **City** considers to place the delivery of services in jeopardy.

In addition, if any of the events listed herein above occurs, the **City** may retain any monies due or to become due. Any increased cost arising as a result of the events listed herein above shall be paid by **MTA**.

ARTICLE 19.
DOCUMENTS, FILES AND CAPITAL EQUIPMENT

MTA shall maintain all documents, files and capital equipment and have such in good order prior to the expiration of this Contract. All documents, files and other records of **LTMI** shall be available for review, inspection, and copying by the City Manager or the City Manager's designee at all times.

**ARTICLE 20.
REPRESENTATION**

MTA represents that it is familiar with the Contract requirements and is fully capable of complying with the Contract provisions.

**ARTICLE 21.
LEGAL CONSTRUCTION**

In case any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

**ARTICLE 22.
WAIVER**

No waiver of any of the provisions of this Contract shall be binding upon the **City** unless the same is in writing. In no event shall this Contract be more strictly construed against the **City** than against **MTA**.

**ARTICLE 23.
PERFORMANCE**

This Contract shall be deemed performable and entered into in Gregg County, Texas, which shall govern for the purposes of venue.

**ARTICLE 24.
CUMULATIVE REMEDIES CLAUSE**

The rights and remedies granted in this Contract to **City** in the event of default are cumulative, and the exercise of such rights shall be without prejudice to the enforcement of any other right or remedy authorized by law or this Contract.

**ARTICLE 25.
ASSIGNMENT**

This Contract and agreement shall not be assigned or transferred by **MTA** without the prior written consent of **City**.

**ARTICLE 26.
NOTICES**

All notices hereunder and communications with respect to this Contract shall be effective upon the mailing thereof by Registered or Certified mail, return receipt requested, postage prepaid, and addressed as follows:

1. If to **MTA** McDonald Transit Associates, Inc.

3800 Sandshell Drive, Suite 175
Fort Worth, TX 76137

2. If to City

Assistant City Manager
City of Longview
300 West Cotton Street
Longview, TX 75601-6222

or to such other address as either party shall designate by written notice.

ARTICLE 27.

RFP AND CONTRACTORS PROPOSAL INCORPORATED BY REFERENCE

The City's Request for Proposal for Provision of Transit Management Services, hereinafter called the **RFP**, and **MTA's** proposal in response to the **City's RFP** is hereby incorporated by reference into this Contract. The document entitled "Assurances" is attached to this Contract as Exhibit A and is a part of this Contract. The document entitled "Drug Free Workplace Act Certification" is attached to this Contract as Exhibit B and is a part of this Contract. If there is any conflict between the provisions of this Contract or the **RFP** or **MTA's** proposal, the provisions of this Contract shall control.

ARTICLE 28. FORCE MAJEURE

MTA shall not be held liable to the **City** for any failure, delay or interruption of service, nor for failure or delay in performance of any obligations under this Contract due to strikes, lockouts, acts of God, governmental restrictions, availability of fuel and supplies, enemy action, civil commotion, unavoidable casualty or similar acts beyond the control of **MTA** and the Resident General Manager.

IN WITNESS WHEREOF, the parties hereto have executed this Contract and agreement on the 21st day of December 2011.

CITY OF LONGVIEW, TEXAS

By: David Willard
David Willard
City Manager

MCDONALD TRANSIT ASSOCIATES, INC.

By: John P. Bartosiewicz
John P. Bartosiewicz
Executive Vice President, Chief Operating Officer

ATTEST:

By: Shelly Ballenger
Printed Name: Shelly Ballenger

Title: City Secretary

ATTEST:

By: Brenda L. Roden
Printed Name: Brenda L. Roden

Title: AVP, Support Services & Assistant Treasurer

APPROVED AS TO FORM & LEGALITY:

Jim Finley, City Attorney



Exhibit A

ASSURANCES

In administering a contract with the City of Longview, **MTA** (also referred to as The **Contractor**) assures and certifies the following requirements.

A. Compliance with Regulations

The **Contractor** shall comply with all regulations relative to federally-assisted programs of U.S. Department of Transportation (hereinafter, USDOT), as they may be amended from time to time (hereinafter referred to as Regulations).

B. Labor Provisions - Nonconstruction Contracts

1. Overtime requirements

No **Contractor** or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages

In the event of any violation of the clause set forth in paragraph (1) of this section the **Contractor** and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such **Contractor** and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

3. Withholding for unpaid wages and liquidated damages

The City of Longview shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the **Contractor** or subcontractor under any such contract or any other Federal contract with the same prime **Contractor**, or any other federally-assisted

contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime **Contractor**, such sums as may be determined to be necessary to satisfy any liabilities of such **Contractor** or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

4. Subcontracts

The **Contractor** or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs one (1) through four (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime **Contractor** shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs one (1) through four (4) of this section.

C. Equal Employment Opportunity - Basic Requirements

The **Contractor** shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, disability, or national origin. The **Contractor** shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, age, disability, or national origin. Such action shall include, but not limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The **Contractor** further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

D. Disadvantage Business Enterprise

1. Policy

It is the policy of the U.S. Department of Transportation that disadvantaged business enterprises as defined in 49 CFR 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or part with federal funds under this agreement. Consequently the DBE requirements of 49 CFR 26 apply to this agreement.

2. DBE Obligation

The recipient or its **Contractor** agrees to ensure that disadvantaged business enterprises as defined in 49 CFR 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this agreement. In this regard all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR 26 to ensure that disadvantaged business

enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, creed, color, national origin, age, sex, or disability in the award and performance of USDOT assisted contracts.

E. Title VI Civil Rights

During the performance of this contract, the **Contractor**, for itself, its assignees and successors in interest, agrees as follows:

1. Compliance with Regulations

The **Contractor** shall comply with the regulations relative to nondiscrimination in federally assisted programs of the U.S. Department of Transportation (hereinafter, USDOT) Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of these assurances.

2. Nondiscrimination

The **Contractor**, with regard to work performed by it during the contract, shall not discriminate on the grounds of race, religion, color, sex, age, or national origin in the selection and retention of subs, including procurements of materials and leases of equipment. The **Contractor** shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

3. Solicitation for Subcontracts, Including Procurement of Materials and Equipment

In all solicitations either by competitive bidding or negotiation made by the **Contractor** for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the **Contractor** of the **Contractor's** obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, religion, color, sex, age, disability, or national origin.

4. Information and Reports

The **Contractor** shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City of Longview, the Texas Department of Transportation (hereinafter referred to as TxDOT), or USDOT to be pertinent

to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the **Contractor** shall so certify to the City of Longview, TxDOT, or USDOT as appropriate, and shall set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance

In the event of the **Contractor's** noncompliance with the nondiscrimination provisions of this contract, the City of Longview shall impose such contract sanctions as it, TxDOT, or USDOT may determine as appropriate, including, but not limited to:

1. Withholding of payments to the **Contractor** under the contract until the **Contractor** complies, and/or,
2. Cancellation, termination, or suspension of the contract in whole or in part.

6. Incorporation of Provisions

The **Contractor** shall include all the provisions of this section in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The **Contractor** shall take such action with respect to any subcontract or procurement as the City of Longview, TxDOT, or USDOT may direct as a means of enforcing such provisions including sanctions for noncompliance: provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the **Contractor** may request the **City** to enter into such litigation to protect the interest of the **City**, and, in addition, the **Contractor** may request the services of the Attorney General in such litigation to protect the interests of the United States.

F. Interest of Members of, or Delegates to, Congress

In accordance with 18 U.S.C. subsection 431, no member of, or delegates to, the Congress of the United States shall be permitted to a share or part of this contract or to any benefit arising therefrom.

G. Prohibited Interests

No employee, officer, or agent of the grantee shall participate in selection or in the award or administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

1. The employee, officer or agent;

2. Any member of his/her immediate family;
3. His/her partner; or
4. An organization which employs, or is about to employ, any of the above,

has a financial or other interest in the firm selected for award.

The grantee's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties of sub agreements.

H. Debarred Bidders

The **Contractor**, including any of its officers or holders of a controlling interest, is obligated to inform the **City** whether or not it is or has been on any debarred bidders list maintained by the United States Government. Should the **Contractor** be included on such a list during the performance of this project, it shall so inform the **City**.

I. Conservation

The **Contractor** shall recognize the mandatory standards and policies relating to energy efficiency which are contained in the State Energy Conservation Plan issued in compliances with the Energy Policy and Conservation Act (42 USC Section 6321 et seq).

J. Program Fraud and Civil Remedies

This contract is subject to Part 31 of the Federal Acquisition Regulation.

K. Drug-Free Workplace Act

The **Contractor** certifies that it complies with the Drug-Free Workplace Act requirements through signing the attached certification, which is incorporated by reference hereto as Exhibit B.

L. Restrictions on Lobbying

The **Contractor** shall certify that no federal appropriated funds have been or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying, in accordance with its instructions.

The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into.

M. Insurance

The **Contractor** will provide continuous enforcement of adequate insurance issued by companies authorized to conduct business in the State of Texas covering all employees employed by the **Contractor**. The **Contractor** shall keep in full force and effect during the term of this agreement insurance in the following types and minimum amounts:

<u>TYPE</u>	<u>AMOUNT</u>
Workers' Compensation Employer's Liability	Statutory \$500,000/\$500,000/\$500,000
<u>TYPE</u>	<u>AMOUNT</u>
Comprehensive Automobile Liability, Business Automobile Insurance Coverage	\$1,000,000 Combined Single Limit \$2,000,000 Annual Aggregate
Professional Liability	\$1,000,000 per occurrence \$2,000,000 aggregate

All insurance policies will name the City of Longview as an additional insured. All insurance policies shall be subject to the examination and approval of the **City of Longview** for their adequacy as to form, content, form of protection, and insurance company. The **Contractor** shall furnish to the **City's** risk manager, for the **City** files, certificates or copies of the policies, plainly and clearly evidencing such insurance, with exclusions, exceptions, or limitations, prior to the execution of this Agreement by all parties and thereafter new certificates or policies prior to the expiration date of any prior certificate or policy.

The **Contractor** understands that it is its sole responsibility to provide this necessary information and that failure to timely comply with these insurance requirements shall be cause for termination of this contract.

All insurance policies required herein shall also provide that such insurance shall not be canceled or materially changed without a minimum of thirty (30) days advance notice in writing to the City of Longview, Texas.

N. INDEMNIFICATION

IF THE CONTRACTOR FAILS TO PROVIDE INSURANCE SET FORTH IN SECTION M. HEREIN NAMING THE CITY AS ADDITIONAL INSURED, THEN THE CONTRACTOR AGREES TO ASSUME FULL RESPONSIBILITY AND LIABILITY FOR THE SERVICES RENDERED UNDER THIS AGREEMENT, AND HEREBY AGREES TO INDEMNIFY, PROTECT AND HOLD HARMLESS THE CITY OF LONGVIEW, ITS EMPLOYEES, AGENTS, AND SERVANTS, OF AND FROM ALL CLAIMS, DEMANDS, AND CAUSES OF ACTIONS OF EVERY KIND AND CHARACTER, INCLUDING THE COST OF DEFENSE THEREOF, FOR ANY INJURY TO, INCLUDING DEATH OF, PERSONS AND ANY LOSSES FOR DAMAGES TO PROPERTY CAUSED BY OR ALLEGED TO BE CAUSED, ARISING OUT OF, OR ALLEGED TO ARISE OUT OF, EITHER DIRECTLY OR INDIRECTLY OR IN CONNECTION WITH THE SERVICES TO BE RENDERED HEREUNDER, WHETHER OR NOT SAID CLAIMS, DEMANDS, CAUSES OF ACTIONS ARE CAUSED BY THE SOLE NEGLIGENCE OF THE CITY OF LONGVIEW, ITS EMPLOYEES, AGENTS, OR SERVANTS, OR WHETHER IT WAS CAUSED BY CONCURRENT NEGLIGENCE OF THE CITY OF LONGVIEW AND A PARTY TO THIS AGREEMENT, OR WHETHER IT WAS CAUSED BY CONCURRENT NEGLIGENCE OF THE CITY OF LONGVIEW AND SOME OTHER THIRD PARTY. IF THE CONTRACTOR PROVIDES THE APPROPRIATE INSURANCE NAMED THE CITY OF LONGVIEW AS AN ADDITIONAL INSURED, THEN THIS SECTION SHALL NOT APPLY.

McDonald Transit Associates, Inc.

Name of Contractor

By: John P. Bartosiewicz Date November 29, 2011
Signature

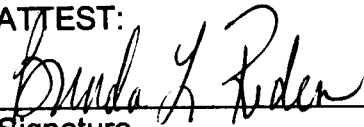
John P. Bartosiewicz

Typed Name

Executive Vice President / Chief Operating Officer

Title

ATTEST:


Signature

Brenda L. Roden

Typed Name

November 29, 2011

Date

Exhibit B

Drug-Free Workplace Act Certification

1. **MCDONALD TRANSIT ASSOCIATES, INC.**, also called the "**Contractor**," certifies that it will provide a drug-free workplace by:
 - (1) Publishing a statement notifying employees that unlawfully manufacturing, distributing, dispensing, possessing, or using a controlled substance in the **Contractor's** workplace is prohibited and specifying the actions that will be taken against employees for violation of such prohibition.
 - (2) Establishing a drug-free awareness program to inform employees about:
 - (1) The dangers of drug abuse in the workplace;
 - (2) The **Contractor's** policy of maintaining a drug-free workplace;
 - (3) Any drug counseling, rehabilitation, and employee assistance programs that are available; and
 - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
 - (C) Making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by paragraph (A).
 - (D) Notifying the employee in the statement required by paragraph (A) that, as a condition of employment under the contract the employee will:
 - (1) Abide by the terms of the statement; and
 - (2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such a conviction.
 - (E) Notifying the City of Longview within ten (10) days after receiving notice under subparagraph (D)(2), from an employee or otherwise receiving actual notice of such conviction.
 - (F) Taking one of the following actions, within thirty (30) days of receiving notice under subparagraph (D)(2), with respect to any employee so convicted:
 - (1) Taking appropriate personnel action against such an employee, up to and including termination; or

(5) Requiring such an employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other local agency.

(G) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (A), (B), (C), (D), (E), and (F).

2. The **Contractor's** headquarters is located at the following address. The addresses of all other workplaces maintained by the contractor are provided on an accompanying list.

Name of Contractor: McDonald Transit Associates, Inc.

Street Address: 3800 Sandshell Drive, Suite 175

City: Fort Worth

County: Tarrant

State & Zip Code: Texas 76137

Signed by: *John P. Bartosiewicz* Date: November 29, 2011

John P. Bartosiewicz, Executive Vice President / Chief Operating Officer
Printed Name and Title